



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JLP:ddj
Docket No: 3625-99
8 September 1999

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 September 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by CMC memorandum 1560 MRV of 24 August 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1560

MRV

24 AUG 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTIONS OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]
[REDACTED]

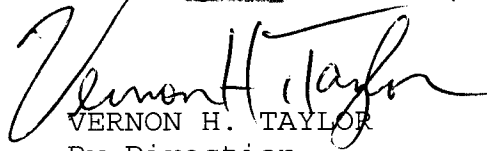
1. [REDACTED] entered active duty during the Post Vietnam Era Veterans Education Assistance Program (VEAP), Chapter 32, Title 38 U.S.C. The VEAP was available for servicemembers who first entered active duty between 1 Jan 77 and 30 Jun 85 and enrolled prior to 30 Mar 87. A review of [REDACTED] Marine Corps Total Force (MCTF), records, and the Department of Veteran's Affairs records indicate that he did not participate in VEAP prior to the 30 Mar 87 deadline.
2. [REDACTED] refers to DD Form 2057 which states that enrollment may be initiated anytime while on active duty. While this was true during the VEAP era, the laws concerning the VEAP were superseded when the Montgomery GI Bill (MGIB) was introduced. Chapter 32, Section 3221, of Title 38 U.S.C., allows "each person entering military service on or after January 1, 1977, and before July 1, 1985, ...the right to enroll in the...program...at any time during such person's service on active duty **before July 1, 1985.**"
3. There are no provisions in law for retroactive enrollment into the VEAP. When legislation was passed initiating an enrollment deadline of 31 Mar 87, the announcement of the legislative change was provided to Marines in the form of 2 ALMARS, 251/86 and 056/87, and a minimum of 4 messages on Marines's LES'S. Effective 1 Apr 87, VEAP was suspended and no new enrollments were allowed. Only Marines who had initially enrolled in the VEAP prior to that date remained eligible.
4. Public Law 104-275 was signed on 9 Oct 97. The provisions of this law, under section 106, allowed the opportunity for VEAP participants to elect to enroll in MGIB. "Participant" is defined in the Code of Federal Regulations Title 38, section 21.5021(e), and the General Counsel for Veterans affairs has determined that it refers to those with a positive dollar balance in their VEAP account. The General Counsel for Department of Defense, after review, has concurred with the VA's General Counsel opinion.

Subj: BCNR APPLICATION IN THE CASE OF G [REDACTED]
206 54 2933

Thus, in order for a servicemember to be eligible they would have had to have been on active duty and a VEAP participant on 9 Oct 96. The law granted one year, until 8 Oct 97, with which to make the election. Since GySgt [REDACTED] did not open a VEAP account prior to 1 Apr 87, he would not have been eligible to elect the MGIB under PL 104-275.

5. Enrollment in the MGIB is offered to: (a) servicemembers whose initial active duty entry date was on or after 1 Jul 85; (b) servicemembers who entered active duty prior to 1 Jan 77, had Chapter 34 education benefits remaining, and who meet other active duty criteria; (c) VEAP era participants who met the eligibility criteria under PL 104-275 and enrolled prior to 9 Oct 97; and (d) servicemembers who are involuntarily separated from active duty with an eligible separation code. GySgt Broughton does not fit into any of the categories listed above and, therefore, is not eligible to enroll in the MGIB.

6. The POC for Veterans Education Programs is [REDACTED]
[REDACTED] DSN [REDACTED] or Commercial [REDACTED]


VERNON H. TAYLOR
By Direction